

## **ASSET PROTECTION AND LONG TERM CARE**

For most people the risk of losing the family home and other assets to fund care at any age is far greater risk than the threat of Inheritance Tax. In general terms, Inheritance Tax will be imposed at the rate of 40% on assets over £325,000 on death – Social Services can take into account 100% of assets over £23,250 (England) during your lifetime to fund residential care.

### **What is Community Care?**

The UK now has one of the highest age dependency ratios in the world and therefore the Government cannot continue to fund long term care out of the public purse. Therefore, Local Authorities are now responsible for assessing a persons need for community care services, and then applying a means test to assess the person’s ability to pay for the services.

The average cost of a place in a nursing home is £693 per week (£36,036 per annum), residential home £498 (£25,896) and domiciliary care £14.00 per hour.

### **Charging for Services**

If a person has more than £23,250 in capital they will have to pay for the residential care services in full. If they have savings of between £14,250 and £23,250, the local authority’s contribution will be reduced to £1 for every £250 of capital over £14,250. Full local authority support will only be available if there are savings of £14,250 or less.

Once savings have fallen to the upper capital limit, the capital value of the resident’s home will be disregarded for 12 weeks, after which it will be assessed as available capital and the home will have to be sold, or a deferred payment agreement entered into, to fund the residential care.

In a financial assessment most capital is taken into account with the exception of the resident’s home in certain circumstances, personal possessions and the surrender value of life policies. Virtually all income is also taken into account including retirement and occupational pensions.

After the financial assessment residents will be left with a Personal Expenses Allowances of £22.60 per week for personal expenditure such as haircuts, clothing, magazines.

## **PROBLEM AREAS**

### **Personal Expenses Allowance**

The figure is reviewed each year, but £22.60 is inadequate and the resident has to use disregarded capital for daily living expenses, in some cases this is the money put aside for the residents funeral.

### **Residential Care Top Up Fees**

Residents who require accommodation in a care home, which is to be arranged by the Local Authority, have a right to choose their accommodation, provided it does not cost more than the Local Authority would expect to pay.

It is possible to choose a more expensive home but a third party, such as a relative or friend, has to top up the fees. A resident cannot use their own money to top up.

### **The Family Home**

The general principle is that, subject to certain exemptions, the resident's former home will be regarded as available capital in a financial assessment. The home will be disregarded where the home is still occupied by spouse, civil partner, partner, relative aged over 60 or incapacitated or a child under 18 maintained by the resident.

Problems will arise if the person living at home wishes to 'downsize'. All or part of the proceeds of the sale may have to be used to fund the resident's care, leaving the spouse or partner in a very difficult position. If money is not immediately available to pay fees the local authority can create a charge on the property, enabling them to recover the debt when the property is sold.

### **Carers and Property Rights**

It is not uncommon for family care to be provided when the parent's home is sold and alterations or improvements are made to the carer's home to facilitate the parent, or both homes are sold and the proceeds pooled in the purchase of a more suitable property.

If the correct formal advice is not taken this can have serious implications for both the homeowner and the resident. For example, if the resident had transferred money to a son or daughter to buy a larger property or construct a 'granny-annex', the local authority could pursue the recipient of the gift for the full cost of the resident's care.

### **Liability of your Spouse or Partner**

A local authority can only undertake a financial assessment on a person requiring care services and not their spouse or partner. However, beware of them asking questions about the resident's spouse or partner. The information obtained may have implications in the future, particularly where assets have been gifted after the resident's admission into care.

### **Pensions**

All of State and part of occupational pensions may be regarded as available income and will inevitably leave the spouse or partner remaining at home with limited income and they may have to turn to the Department for Work and Pensions for state support.

If the resident is married then 50% of occupational pensions will go back home to their spouse, but if the resident was co-habiting then the local authority are able to take 100% of this income.

## **Business Assets**

Financial assessments will take into account a resident's interest in a business which may affect its future viability. If a resident fails to pay an assessed contribution and has a beneficial interest in land in England or Wales, a local authority may create a charge over that interest to protect its position.

This is an important issue for people who are in business, particularly in relation to the generous relief given for inheritance tax purposes on business and agricultural property. The impact of funding long-term care may outweigh the inheritance tax saving.

## **Deprivation of Assets**

If a local authority considers that assets have been given away in order to avoid payment of care fees, they will treat that person as still possessing the asset when assessing their ability to contribute towards the cost of care. The local authority has wide powers to recover payment and this may cause serious problems, particularly where the person receiving the cash payment has used the money to buy a property or business. That property or business may have to be sold to fund the resident's care. Only if the person is ill when the gifts are made will they be taken into consideration but there is no time limit during which a local authority can look back at the purpose of making a gift.

## **PRESERVING AND SHELTERING ASSETS**

### **Putting your Affairs in Order**

- Keep a record of personal assets
- Make a Will
- Make a Lasting Power of Attorney
- Arrange a financial health check, including a welfare benefits assessment
- Consider a pre-arranged funeral plan

### **Make a Will**

The majority of Wills are of a mirror husband/wife type, whereby on first death the survivor inherits and on second death the estate passes to the children in equal shares. Problems can arise under this type of arrangement if for example the wife enters into a care home, on the death of the husband, his estate will pass to his wife and will be used to pay the care home fees resulting in little or nothing passing to the children. If however, the joint tenancy (joint ownership) of the family homes has been severed and the husband changed his Will leaving his interest in the property in a Property Protection Trust and the residue of his estate to his wife or children, at least part of the family assets would have been preserved.

## **Joint Assets**

If savings are held in a joint account, on death, the surviving joint owner will inherit the whole account which will be taken into account in a local authority financial assessment. Consideration should be given to maintaining separate accounts to preserve capital.

## **The Family Home**

Invariably the home will be the principal asset and it will be the home itself or the proceeds of sale that people wish to preserve as an inheritance.

- Check the title deeds to see if held as Joint Tenants or tenants in common
- Sever a joint tenancy to create a tenancy in common and make a new Will incorporating a Property Protection Trust
- Consider putting occupiers into the title either direct or through a trust to 'devalue' the owners interest in a local authority financial assessment
- Buy-out a joint owner's interest in a property
- Take advantage of the property disregards
- Deferred Payment Agreements
- Consider placing the home into a Trust
- Establish a trust from the facts of the case
- Rent the property
- Gift the home during your lifetime, either outright or into a Asset Protection Trust
- Equity Release Schemes

## **Business Assets**

Whilst many elder people may not consider an interest in a family business as being theirs, particularly where they regard the business as having already passed to the next generation the local authority may have a different view.

The test adopted by the local authority is whether or not the asset would be available to the resident if he or she were to resort to it. Beware of dangers of retention of interest in the business to qualify for Inheritance Tax relief.

Consider transfer of ownership – sale, outright gift or trust, restrictions incorporated into Partnership Agreement restricting withdrawal of capital from the business in certain circumstances, or the family business could fund long term care direct or through long term care insurance.

## **Pensions and Insurances**

The capital value of an annuity or a private pension and the surrender value of a life insurance policy will be disregarded by a local authority assessment. Life Insurance Bonds and discretionary trust are probably the only two methods of potentially sheltering a liquid asset while retaining access to it. It is possible to combine the two but this may be seen as a deprivation.

## **Inheritances**

If an inheritance is received whilst having local authority financial support that person will be re-assessed financially and the inherited assets will be regarded as capital. Members of the family should periodically review their Wills.

## **Trusts**

A trust could be set up for a person requiring care which will become operational on death and last for the cared persons lifetime. The financial effect will depend of the terms of the trust and whether there is an entitlement to capital or income. There are tax advantages and disadvantages to consider and professional advice should be taken.

## **Long Term Care Insurance**

Insurance is now focused on the immediate care market where a lump sum payment is used to purchase an income for life to top-up other income to meet the cost of care.

Everyone needs to plan in plenty of time, and while they are still fit and healthy. Those over the age of 55 need to take financial and legal advice regarding the set up of their Wills and before making any gifts.